

7. REGULATORY COMPLIANCE AND PERMIT REQUIREMENTS

This section lists federal, state, and local regulatory compliance and permit requirements for the proposed facilities.

7.1 FEDERAL REQUIREMENTS

CLEAN AIR ACT

- Enacted by Public Law 90-148, Air Quality Act of 1967 (42 USC 7401 et seq.)
- Amended by Public Law 101-549, Clean Air Act Amendments of 1990
- Comprised of Titles I through VI
- Applicable titles
 - Title I—Air Pollution Prevention and Control. This Title is the basis for air quality and emission limitations, PSD permitting program, State Implementation Plans, New Source Performance Standards, and National Emissions Standards for Hazardous Air Pollutants.
 - Title IV—Acid Deposition Control. This Title establishes limitations on sulfur dioxide and nitrogen oxide emissions, permitting requirements, monitoring programs, reporting and record keeping requirements, and compliance plans for emission sources. This Title requires that emissions of sulfur dioxide from utility sources be limited to the amounts of allowances held by the sources.
 - Title V—Permitting. Although a Title V permit may not be required, this Title provides the basis for the Operating Permit Program and establishes permit conditions, including monitoring and analysis, inspections, certification, and reporting. Authority for implementation of the permitting program is delegated to authorized states, including Pennsylvania.
- Regulations implementing the Clean Air Act are found in 40 CFR Parts 50–95.

CLEAN WATER ACT

- Enacted by Public Law 92-500, Federal Water Pollution Control Act Amendments of 1972 (33 USC 1251 et seq.)
- Amended by Public Law 95-217, Clean Water Act of 1977, and Public Law 100-4, Water Quality Act of 1987
- Comprised of Titles I through IV
- Applicable titles
 - Title III—Standards and Enforcement.
 - Section 301, Effluent Limitations, is the basis for establishing a set of technology-based effluent standards for specific industries.

- Section 302, Water Quality Related Effluent Limitations, addresses the development and application of effluent standards based on water quality goals for the waters receiving the effluent.
- Title IV—Permits and Licenses.
 - Section 402, National Pollutant Discharge Elimination System (NPDES), regulates the discharge of pollutants to surface waters. Regulations implementing the NPDES program are found in 40 CFR Part 122. Authority for implementation of the NPDES permit program is delegated to authorized states, including Pennsylvania.
 - Section 404, Permits for Dredged or Fill Material, regulates the discharge of dredged or fill material in the jurisdictional wetlands and waters of the United States. The U.S. Army Corps of Engineers has been delegated the responsibility for authorizing these actions.
- Regulations implementing the Clean Water Act are found in 40 CFR Parts 104–140. Regulations that affect the permitting of this project include
 - 40 CFR Part 112—Oil Pollution Prevention. This regulation requires the preparation of a Spill Prevention, Control, and Countermeasure Plan.
 - 40 CFR Part 122—NPDES. This regulation requires the permitting and monitoring of any discharges to waters of the United States.

EXECUTIVE ORDERS 11988 AND 11990

Executive Order 11988, Floodplain Management, directs federal agencies to establish procedures to ensure that they consider potential effects of flood hazards and floodplain management for any action undertaken. Agencies are to avoid impacts to floodplains to the extent practical. Executive Order 11990, Protection of Wetlands, requires federal agencies to avoid short- and long-term impacts to wetlands if a practical alternative exists. DOE regulation 10 CFR Part 1022 establishes procedures for compliance with these Executive Orders. Where no practical alternatives exist to development in floodplain and wetlands, DOE is required to prepare a floodplain and wetlands assessment discussing the effects on the floodplain and wetlands, and consideration of alternatives. In addition, these regulations require DOE to design or modify its actions to minimize potential damage in floodplains or harm to wetlands. DOE is also required to provide opportunity for public review of any plans or proposals for actions in floodplains and new construction in wetlands.

The floodplain and wetlands effects anticipated from this proposed project are provided in the following sections of the EIS: Section 3.5.1 (Floodplains—Existing Environment), Section 3.5.2 (Wetlands—Existing Environment), Section 4.1.5.1 (Floodplains— Environmental Consequences), and Section 4.1.5.2 (Wetlands—Environmental Consequences).

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

- Enacted by Public Law 95-87, Surface Mining Control and Reclamation Act of 1977
- The Act provides for the federal regulation of surface coal mining operations and the acquisition and reclamation of abandoned mines.
- Applicable title
 - Title V— Control of the Environmental Impacts of Surface Coal Mining. This Title authorizes the implementation of and federal funding for state regulatory programs that meet the minimum standards specified by the statute. The Pennsylvania Department of Environmental Protection is authorized to administer the regulatory program under this Act.

RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

- Enacted by Public Law 94-580, Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.)
- Amended by legislation including Public Law 98-616, Hazardous and Solid Waste Amendments of 1984, Public Law 99-499, Superfund Amendments and Reauthorization Act of 1986, and Public Law 104-119, Land Disposal Flexibility Act of 1996
- Applicable title
 - Title II—Solid Waste Disposal (known as the Solid Waste Disposal Act). This Title regulates the disposal of solid wastes. Title II, Subtitle C—Hazardous Waste Management, provides for a regulatory system to ensure the environmentally sound management of hazardous wastes from the point of origin to the point of final disposal. Pennsylvania has delegated authority to administer most elements of the RCRA Subtitle C program within the state. Title II, Subtitle D—State or Regional Solid Waste Plans, allows states to plan for managing and permitting the disposal of solid wastes and requires each state to develop and implement a regulatory program to ensure that municipal solid waste landfills and other facilities that receive household hazardous waste or conditionally exempt small quantity generator hazardous waste meet federal minimum standards (40 CFR Part 258) for the location, design, operation, closure, and post-closure care of municipal solid waste landfills.
- Project participants would be required to identify any residues that require management as hazardous waste under RCRA (40 CFR Part 261). For some waste streams, this includes testing waste samples using the toxic characteristic leaching procedure or other procedures that measure hazardous waste characteristics.

ENDANGERED SPECIES ACT OF 1973

- Enacted by Public Law 93-205, Endangered Species Act of 1973 (16 USC 1531 et seq.)
 - Section 7, “Interagency Cooperation,” requires any federal agency authorizing, funding, or carrying out any action to ensure that the action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species. Consequently, the U.S. Fish and Wildlife Service will conduct a consultation, in compliance with Subsection (a)(2) of Section 7 of the Act, with regard to the impacts of the proposed project on threatened and endangered species listed by the U.S. Fish and Wildlife Service and any critical habitat of such species in the vicinity of the proposed facilities.

Under Section 7 of the Act, DOE has consulted with the U.S. Fish and Wildlife Service (Appendix A).

NATIONAL HISTORIC PRESERVATION ACT OF 1966

- Enacted by Public Law 89-665, National Historic Preservation Act of 1966 (16 USC 470 et seq.)
- Under Section 106, the head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation established under Title II of the Act a reasonable opportunity to comment with regard to such undertaking.

Under Section 106 of the Act, DOE has consulted with Pennsylvania’s State Historic Preservation Officer (Appendix B).

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

- OSHA General Industry Standards (29 CFR Part 1910). Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor’s Order Numbers 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), and 6-96 (62 FR 111), as applicable
- OSHA Construction Industry Standards (29 CFR Part 1926). Authority: 44 FR 8577, February 9, 1979; 44 FR 20940, April 6, 1979

FEDERAL AVIATION ACT OF 1958

- Enacted by Public Law 85-726, Federal Aviation Act of 1958 (49 USC 1101 et seq., as amended)
- Regulations implementing this Act are found in 14 CFR Part 77 and are enforced by the U.S. Department of Transportation, Federal Aviation Administration.
- These regulations require submittal of a notice identifying any structures that, because of construction or alteration, may be a hazard to air transportation. WMPI would submit to the Federal Aviation Administration the agency's Form 7460-1, Notice of Proposed Construction or Alteration.

7.2 STATE REQUIREMENTS

- On March 18, 2005, the Pennsylvania Department of Environmental Protection issued Air Quality Program Permit No. 54-399-034 for the proposed facilities. The permit, which expires on March 31, 2010, establishes maximum allowable limits for total facility emissions during any consecutive 12-month rolling period (Section 4.1.2.2).
- Treated wastewater from the existing Gilberton Power Plant, which is discharged to an ash pond in the Mahanoy Creek valley, is regulated by Pennsylvania NPDES industrial wastewater discharge permit 278784, issued in 1997. Discharge of treated effluent from the proposed facilities would also require an NPDES permit issued by the Pennsylvania Department of Environmental Protection. A new set of effluent standards would be established for the new facilities.
- Groundwater withdrawal and consumptive water use permits from the Susquehanna River Basin Commission would be required for withdrawal and use of water from the Gilberton mine pool. The Susquehanna River Basin Commission, which was established in 1972 by the Susquehanna River Basin Compact, is composed of representatives from the federal government and the states of New York, Pennsylvania, and Maryland. Article 11 of the Compact authorizes the river basin commission to regulate and control withdrawals and diversions from surface waters and groundwaters of the basin. In Pennsylvania, the river basin commission coordinates actions on specific projects with the Pennsylvania Department of Environmental Protection. The facilities' water use would need to be reported regularly to the river basin commission and the Pennsylvania Department of Environmental Protection, as required by Pennsylvania Act 220.
- Beneficial use or disposal of slag, ash, or water and wastewater treatment sludges, including use in mine reclamation, would be subject to the requirements of Pennsylvania's residual waste management regulations, at 25 Pa. Code Chapter 287. Chemical analysis and leach testing of the materials would be required prior to some uses. Individual or general permits could be required depending on the intended management, but no permit is needed for use of coal combustion products in concrete manufacture, or for use of slag or bottom ash as a construction aggregate, antiskid material, or road surface preparation material.

- Mining and mine reclamation activities associated with the proposed facilities could require permits and approvals from the Pennsylvania Department of Environmental Protection under regulations at 25 Pa. Code Chapter 86 (Surface and Underground Coal Mining: General) and Chapter 88 (Anthracite Coal). Alternatively, if coal is obtained from refuse material on an abandoned mining property, the Pennsylvania Department of Environmental Protection could waive the permit requirement and sign a government-financed construction contract allowing the acquisition of coal in exchange for land reclamation and abatement of mine drainage.
- Any landfill used for disposal of solid waste generated by the proposed project must have an appropriate license from the Pennsylvania Department of Environmental Protection. Regulations for the siting, design, and operation of municipal solid waste landfills are at 25 Pa. Code Chapter 273. Regulations for construction/demolition waste landfills are at 25 Pa. Code Chapter 277. Licensed municipal solid waste landfills may receive construction wastes and residual waste in addition to normal municipal refuse, but specific approval from the Pennsylvania Department of Environmental Protection would be required for disposal of residual wastes such as sludge or ash. To be approved for disposal in a municipal solid waste landfill, residual waste from the proposed facilities would need to meet several criteria: (1) the waste must be compatible with the liner system and other wastes received by the facility, (2) the leachate generated by the waste must be adequately treated by the landfill's leachate treatment facility, and (3) the physical characteristics of the waste must not cause or contribute to structural instability or other operational problems at the landfill site.

7.3 LOCAL REQUIREMENTS

- WMPI would be required to comply with environmental and zoning regulations specified by Mahanoy and/or West Mahanoy Townships and Schuylkill County for construction and operation of the proposed facilities.
- Building and grading permits would need to be obtained from Mahanoy and/or West Mahanoy Townships before commencing construction. Facility designers would need to verify building code requirements, including requirements related to seismic safety, with local permitting agencies before commencing detailed design. Building and grading permits would include provisions for sediment control and for disposal of stumps and other debris from land clearing. Approval of open burning for disposal of land-clearing debris would be included in the permit.
- Construction of an onsite septic system for treatment and disposal of sanitary wastewater would require a permit from Mahanoy and/or West Mahanoy Townships, as required by the Pennsylvania Sewage Facilities Act (Act 537 of 1966).